IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.38 OF 2006

Bharat S. Dahanukar,)
Age: 35 years, Indian Inhabitant,)
Residing at Flat No.1, Khusma Apart-)
ment, M.L.Dahanukar Marg,)
Mumbai 400 026.) ...Applicant

Versus

1. The State of Maharashtra)

2. M/s.The Federal Bank Limited,)
a company registered under the)
provisions of Companies Act, 1956)
and having its branch office at)
32, Mumbai Samachar Marg, Fort,)
Mumbai.) ...Respondents

AND
CRIMINAL APPLICATION NO.39 OF 2006

1. Bharat S. Dahanukar,)
Age: 35 years, Indian Inhabitant,)
Residing at Flat No.1,Khusma Apart)
-ment, M.L.Dahanukar Marg,)
Mumbai 400 026.)

2. Haresh H. Java,)
Indian Inhabitant, Residing at)
1/22, Manik Niwas, Warden Road,)
Mumbai 400 026.) ...Applicants

Versus

1. The State of Maharashtra)

2. M/s.Hindustan Construction Co.,)
Limited, a Company incorporated)
under the provisions of Indian)
Companies Act, having its)
registered office at Construction)
House, Walchand Hirachand Marg,)
Ballard Pier, Mumbai 400 001.) ...Respondents

Shri Subhash Jha i/by M/s.Law Global & Associates for the Applicants in both the Applications.

Mrs M.M.Deshmukh, A.P.P for the State in both the Applications.

CORAM : A. S. OKA, J.

DATE ON WHICH SUBMISSIONS ARE HEARD : DECEMBER 13, 2006.

DATE ON WHICH JUDGMENT IS PRONOUNCED : DECEMBER 22, 2006.

JUDGMENT:

1. These Applications under section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the said Code) can be conveniently disposed of by a common order. Prayer in these Applications is for quashing the complaints filed by the second Respondent under section 138 and section 141 of the Negotiable Instruments Act, 1881. In both the complaints, the learned Magistrate has issued process.

2. The question is whether these Applications can be entertained when a remedy available to the Applicants to prefer a Revision Application under section 397 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the said Code) for

challenging the order issuing process has not been exhausted by the Applicants. This issue arises in view of a decision of the learned single Judge of this court in the case of **V.K.Jain and Ors. Vs. Pratap V. Padode and Anr. (2005(3) Maharashtra Law Journal Page 778).**

3. Shri Jha, the learned Counsel appearing for the Applicants did not dispute that order passed by the learned Magistrate of issuing process can be challenged by the Applicants by filing a Revision Application under section 397 of the said Code and that the Applicants have not filed such a revision Application. He submitted that the remedy available under section 482 of the said Code is much wider than the remedy available under section 397 of the said Code. He submitted that the scope of powers of this Court under section 482 of the said Code is wider than the limited powers of the Sessions Court in Revisional Jurisdiction under section 397 of the said Code. He submitted that if the Applicants file a Revision Application before the Sessions Court and if he does not succeed in the said Revision Application, bar under sub-section 3 of section 397 of the said Code will come in the way of

the Applicants in approaching this court by way of filing an Application for invoking the powers under section 482 of the said Code. He has placed reliance on several decisions which are referred to in this Judgment. He submitted that the view taken by this Court in the case of Shri V.K.Jain (supra) is contrary to the law laid down by the Apex Court.

4. In the case of V.K.Jain (supra) a contention was raised before the learned single Judge of this Court that in view of decision of the Apex Court in the case of Adalat Prasad Vs. Rooplal Jindal (2004 Supreme Court Cases (Cri.) Page 1927) as well as in the case of **Subramanium Sethuraman Vs. The State of Maharashtra and Anr. (2005(1) Maharashtra Law Journal Page 626)**, a Revision Application under section 397 of the said Code is not maintainable against an order issuing process on a private complaint. After considering the aforesaid decisions of the Apex Court, the learned single Judge held that an order issuing process is not an interlocutory order and hence, a Revision Application against the said order is maintainable.

5. The learned single Judge in paragraph No.26 of

the said decision thereafter proceeded to hold as under:

> "26. **If one bears in mind the principle laid down in the case of Madhu Limaye in relation to the exercise of power of the High Court under section 482 of Criminal Procedure Code, it is clear such power should not be resorted to if there is specific provision in the Code for the redress of the grievance of the aggrieved party. As observed earlier, the applicants have an efficacious remedy of preferring revision in respect of the order of the Magistrate issuing process**. Thus, as there is a specific provision in the Code for redressal of the grievance of the applicants, in my opinion, it would be appropriate that the applicants prefer a revision against the order of the Magistrate issuing process. This is the position in respect of the application under Section 482 of Criminal Procedure Code. As far as Writ Petitions seeking similar reliefs i.e. quashing of process or proceedings in which process has been issued,

> are concerned, it would be advantageous to refer to a decision by five Honourable Judges of the Supreme Court in the case of Thansingh Nathmal Vs. The Supdt. of Taxes Dubri and Ors. reported in MANU/SC/0255/1964., AIR 1964 SC 1419, [1964]6 SCR654, [1964]15 STC468 (SC). In the said decision, it has been observed that when there is an efficacious alternate remedy, a Writ Petition ought not to be entertained."(Emphasis supplied)

In paragraph No.27 the learned single Judge held thus:

> "27. Thus as in my opinion, when, the applicants have an efficacious remedy of preferring revision before the Sessions Court against the order issuing process they should not be deprived of the same. Hence, in view of the discussion in the foregoing paras, in my opinion, it would be appropriate that the applicants prefer a revision before the concerned Sessions Court against the order issuing process against them."

6. The Apex Court in the case of **The State Vs. Navjot Sandhu & Ors. (2002) 6 Supreme Court Cases Page 641)** held that (a) the inherent jurisdiction of the High Court under section 482 of the said Code can be exercised even when there is a bar under section 397 or under some other provisions of the said Code in view of non obstante clause used in section 482; (b) however, this power cannot be exercised if there is a statutory bar in some other enactment; (c) if the order assailed could be corrected in exercise of revisional powers or appellate powers, the High Court must refuse to exercise its inherent power; (d) the inherent power is to be used only in cases where there is an abuse of process of the court or where interference is absolutely necessary for securing the ends of justice; (e) the inherent power must be exercised very sparingly. The inherent power is not to be resorted to if there is a specific provision in the Code or any other enactment for redressal of grievance of the aggrieved party.

7. Thus, the law laid down by the Apex Court in the case of Navjot (supra) makes it very clear that power under section 482 can be exercised even when

there is bar under section 397 of the Code. Thus, the submission of Shri Jha that if Revision Application is decided against the Applicants it will not be open for the Applicants to approach this Court for invoking the powers under section 482 of the said Code is not correct. The learned single Judge of this court in the case of **Ashok Yashwant Samant Vs. Suparana Ashok Samant (1990 Maharashtra Law Journal Page 963)** held that High Court can exercise its powers under Article 227 of the Constitution of India as well as under section 482 of the said Code even after aggrieved party has exhausted the remedy of filing Revision Application under section 397 of the said Code. However, the Apex Court in the case of Navjot Sandhu has held that the inherent power is not to be resorted to if there is a specific provision in the Code for redressal of the grievance of the aggrieved party.

8. The submission of Shri Jha is that when it is demonstrated that there is a gross abuse of process of law, the High Court can exercise power under section 482 of the said Code even though remedy under section 397 is not availed of. He submitted that while deciding a revision against an order issuing process

the court exercising the power of revision cannot look into any material which is not produced alongwith the complaint. Relying on decision of the learned single Judge of this court in the case of **Shriram D. Mulay and Anr. Vs. Thakurdas Sharma (Criminal Application No.46 of 1977 decided on 20/21 April, 1977)** he submitted that power of this court under section 482 is not controlled by section 397 of the said Code. He invited my attention to the decision of the Apex Court in the case of **Netai Dutta Vs. State of West Bengal ((2005) 2 Supreme Court Cases Page 659)** and submitted that when prosecution initiated was likely to result only in shear harassment to the accused without any fruitful result, the power under section 482 of the said Code can always be exercised.

9. Shri Jha also placed reliance on a decision of the Apex Court in the case of **Union of India & Anr. Vs. Major Bahadur Singh (2005 AIR SCW Page 6113)** and submitted that the decision of the Apex Court in the case of Madhu Limaye (AIR 1978 S.C. Page 6113) cannot be read either as Euclid’s theorem or as a statute. He submitted that decision in the case of Madhu Limaye (supra) cannot be read to mean that jurisdiction of

the High Court is ousted when a remedy of revision under section 397 is available.

10. Shri Jha, the learned counsel for the Applicants placed reliance on the decision of the Apex Court in the case of **S.W.Palnitkar Vs. State of Bihar [(2002) 1 Supreme Court Cases Page 241]**. He placed reliance on paragraph Nos.23, 24 and 27 of the said decision. Perusal of the said decision shows that it has no bearing on the issue which is decided in the case of V.K.Jain & Ors (supra). Shri Jha also relied upon another decision of the Apex Court in the case of **Indian Oil Corporation Vs. NEPC India Ltd. and others [(2006) 6 Supreme Court Cases Page 736]**. The said decision of the Apex Court has laid down the parameters relating to exercise of jurisdiction under section 482 of the Code of Criminal Procedure, 1973. The said decision will not affect the view taken by this court in the case of V.K.Jain and others (supra).

11. The ratio of the decision in the case of V.K.Jain (supra) is not that availability of a remedy under section 397 of the said Code affects or takes away the power of this court under section 482 of the

Code. What is held by this court in the case of V.K.Jain and others (supra) is that if a remedy under section 397 is available and is not availed of, normally, a Petition under Article 227 of the Constitution of India or an Application under section 482 will not be entertained. In every case, where the Applicant can obtain equally efficacious relief by taking recourse to a Revision under section 397 of the said Code, this court will not entertain an Application under section 482 of the said Code as inherent power has to be exercised very sparingly. Therefore, there is no merit in the submission of Shri Jha that the decision of the learned single Judge in the case of V.K.Jain (supra) is contrary to the law laid down by the Apex Court.

12. The Apex Court has time and again held that the inherent jurisdiction though wide has to be exercised very sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in section 482. In the present case when the Applicants can avail of remedy of filing a Revision Application before the Sessions Court for challenging the order issuing process, the

jurisdiction under section 482 which is to be exercised sparingly cannot be invoked. Even if the Applicants fail in the Revision Application, their remedy of approaching this court is not taken away provided the case is covered by tests specifically laid down in section 482 of the said Code. In view of the law laid down by the Apex Court and in particular in the case of Navjot Sandhu (supra), I am not inclined to entertain these Applications as the Applicants can avail of a remedy under section 397 of the said Code.

13. The Criminal Applications are not entertained and the same are rejected. Rejection of the Criminal Applications will not come in the way of the Applicants preferring revision Applications before the appropriate Sessions Court. If revision Applications are preferred, the concerned court will take into consideration the fact that these Applications were filed in this court on 06th January, 2006 and the same remained pending till today.

JUDGE